

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.669 of 1986

Date of decision : 21.02.2007

Ramji Dass (dead) through LR Neena Rani Appellant

versus

Gurdwara Singh Sabha, Dharamkot and another Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.K.Battas, Advocate and
Mr.Raman Mohinder, Advocate for the appellant.

Mr.J.R.Mittal, Senior Advocate with
Mr.Kashmir Singh, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby his suit for possession of land measuring 49 kanals 18 marlas was dismissed.

The dispute in the suit relates to estate of one Sardhi Devi who died on 19.1.1982. The plaintiff claimed her estate on the basis of registered Will in his favour dated 12.4.1971, whereas, the defendants claim the estate of the deceased on the basis of Will dated 23.12.1980, executed by her in their favour revoking the earlier Will.

Earlier, the appeal was allowed by this Court on 18.7.2000, but the said judgment has been set aside by the Hon'ble Supreme Court of India on 5.10.2005 as substantial questions of law were not framed while

deciding the aforesaid appeal.

After hearing learned counsel for the parties, it was found that the following substantial questions of law arise for consideration of this Court:-

“Whether the unregistered Will dated 23.12.1980, recorded in the proceedings book of the Gram Panchayat and attested by Panches and other persons, is proved to be executed and that such Will is not surrounded by suspicious circumstances?

The deceased Sardhi Devi wd/o Harnama used to reside with the plaintiff Ramji Dass. She appointed him as her Attorney. Ramji Dass used to manage the property of Smt.Sardhi Devi. Keeping in view the proximity of Sardhi Devi with Ramji Dass, she executed a registered Will on 12.4.1971 constituting him as her sole heir in sound disposing mind. It was the case of the plaintiff that she never executed any Will thereafter or cancelled the aforesaid Will and, therefore, the plaintiff is entitled to succeed her estate. On the other hand, it was the case of the defendants that Smt. Sardhi Devi was devotee of Guru Granth Sahib and she used to spend her time in service of Guru Granth Sahib. The plaintiff did not serve her or she appointed the plaintiff as her attorney. It was the case of the defendants that Smt.Sardhi Devi never executed any Will in favour of the plaintiff and even if any Will was executed, the same was cancelled when she executed a Will in favour of the defendants on 23.12.1980 before the Gram Panchayat of Village Lohgarh. The said Will is scribed

by Mastan Singh, Secretary of Gram Panchayat of village Lohgarh and witnesses of that Will were Bant Singh, Sarpanch of Village Lohgarh, Chand Singh, Sarwan Singh, Panch, Sagar Singh, Panch, Joginder Singh Lambardar of Dharamkot. On the basis of said Will recorded in the proceeding book of the Gram Panchayat, the land was mutated in favour of the defendants.

PW-1 Ram Ji Dass deposed that he was appointed as Attorney by Smt.Sardhi Devi and that Harnama, husband of Smt.Sardhi Devi died 40-45 years ago. No child was born to Smt.Sardhi Devi from Harnama. Exhibit P-1, copy of the voter list was produced to show that Smt.Sardhi Devi was recorded as voter with the plaintiff in his house. Ration Card, Exhibit P-2 shows that it is joint ration card. He has further deposed that Smt.Sardhi Devi used to go to Mandir i.e. Temple to pay respect and never went to Gurudwara. She was known as his wife. PW-4 Ajit Singh, attesting witness of the Will dated 12.4.1971, is the former President of the Municipal Committee, Dharamkot. He has deposed that after the death of Harnama, husband of Smt.Sardhi Devi, she was putting up with Ram Ji Dass in the same house till her death. The Will Exhibit P-3 was scribed by Brij Mohan at Zira when Smt.Sardhi Devi was in sound disposing mind. The Will was read out to Smt.Sardhi Devi who thumb marked the same in his presence and in the presence of Niranjana Singh Lambardar. He and Niranjana Singh Lambardar attested the Will in the presence of Smt.Sardhi Devi. Smt.Sardhi Devi admitted the Will to be scribed before the Sub Registrar in his presence and in the presence of

Niranjan Singh. He has further deposed that Smt.Sardhi Devi was Sanatinist and she did not visit the Gurudwara. However, he has seen Smt.Sardhi Devi going to Thakur Dwara, but she never gone to Gurdwara. PW-5 Brij Mohan scribed the Will who has supported the execution of the Will by Smt.Sardhi Devi on 12.4.1971. He had made entry in the petition writer's register. On that date Smt.Sardhi Devi executed a sale deed as well. He had made entry in the register in respect of sale deed. Photocopies of the register containing such entry were also produced.

On the other hand, the Will Exhibit D-1 dated 23.12.1980 was sought to be proved by DW-1 Bant Singh, Sarpanch of the Village. He has deposed that Smt.Sardhi Devi executed the Will Exhibit D-1 in favour of the defendant and Gurudawara Singh Sabha of Dharamkot and Dera Ram Lohgarh in equal shares. The Will was recorded in the proceeding book of the Gram Panchayat. It was ordinary meeting of the Gram Panchayat under his Chairmanship. The Will was scribed by Mastan Singh Secretary. It was read out to Smt.Sardhi Devi who thumb marked the same in his presence. DW-3 Chand Singh is the attesting witness who has supported execution of the Will. Chand Singh is the President of Municipal Committee, Dharamkot and at the time of execution of the Will, he was the Municipal Commissioner. He has deposed that the Will was executed at Lohgarh because she was under the pressure of Ram Ji Dass at Dharamkot. Mastan Singh DW-2 was examined as scribe of the Will.

The plaintiff also examined PW-6 Shri Satwant Puri, the document and hand writing expert, who has deposed that he has examined the disputed thumb impressions on the Will Exhibit D-1 dated 23.12.1980 in the register of the Panchayat and compared it with the specimen thumb impression on the registered Will dated 12.4.1971 and the thumb impression on the registration of the same Will i.e. the endorsement by the Sub Registrar on the Will and the thumb impression on the Power of Attorney dated 3.6.1960. He has opined that the disputed thumb impression on the Will Exhibit D-1 are either shaken or super imposed and in the central portion the ridges show circular nature as is in the whirl type of pattern. The specimen thumb impression A and B are of the left hand and of loop type. The specimen thumb impression at A1 on the endorsement of the registered Will dated 12.4.1971 is of the right hand and of loop type. He stated that whatever comparison is possible, considering the condition of the thumb impression, does not show identity with the specimen thumb impression of both the left and right hand. He concluded in his report Exhibit PW6/A that the thumb impression on the Will dated 23.12.1980 purportedly that of Smt.Sardhi Devi was neither of her right hand nor of left hand.

I have perused the original proceeding book containing the purported thumb impressions of Smt.Sardhi Devi. The conclusion drawn by hand writing and documents expert cannot be said to be in any way inconsistent from the perusal of original document as well. Thus, the defendants have failed to prove the execution of the Will. Apart from the

said fact, the said Will is surrounded by suspicious circumstances as well. The Will is the last document entered in the proceeding book and contains only one thumb impression. The Will itself is written as two pages, but the signatures/thumb impressions of the persons who have attested the Will run into number of pages. On the initial three pages, there are numerous thumb impressions affixed in haphazard manner, but on other four pages, the thumb impressions are in organized form. It could not be explained as to why the Will was executed in the proceeding book of the Gram Panchayat when such Will has nothing to do with any of the affairs of the Panchayat. If the Will could be executed before the Gram Panchayat, the same could have been got registered before the Sub Registrar by the testator as well. The attestation by a number of persons is in different ink and there is no explanation as to why Will is executed in the presence of large number of persons. But still only two attesting witnesses have been examined. The register of the Panchayat is not proved to be checked by the Block Development and Panchayat Officer or any functionary of the Panchayat, either when the register was started or at the end of it. Still further, the Will Exhibit D-1 mentions about the execution of earlier Will in favour of Ramji Dass, but the date of such Will has not been mentioned in the Will Exhibit D-1. Still further, if Smt.Sardhi Devi could execute a registered Will in the year 1971, then it is not understandable that 9 years later she would execute an unregistered Will. Though the Will is stated to be executed on 23.12.1980 and attested by a number of persons, but the same was not registered at the time of execution of Will or even later as

she died more than one year after the alleged execution. Still further, the attesting witnesses of the plaintiff have deposed that Smt.Sardhi Devi was not married to Ramji Dass, but she was residing with Ram Ji Dass. She was Brahmin by Caste and had no faith in Gurdwara or Thakur Dawara. Therefore, it is not possible to believe that she would deprive Ram Ji Dass of inheritance with whom she was staying after the death of her husband 40- 45 years back. It is for the propounder i.e. the defendant to prove the genuineness and authenticity of the Will and that the Will was executed by the Testator in sound disposing mind. However, the defendant has failed to prove either the due execution of the Will and to dispel suspicious circumstance surrounding execution of the Will.

The learned First Appellate Court has wrongly excluded the opinion of the Hand Writing Expert on the basis of photographic chart Exhibit PW6/D prepared by the Expert for the reasons that his opinion is not very clear. In fact, the Expert has clarified this fact that the thumb impression appears to be shaken or super imposed. But after examining the thumb impressions with all possible techniques, he has deposed that the thumb impression are not of Smt.Sardhi Devi. The defendants have not examined any hand writing expert to disprove the report of said expert. Another reasoning given by the First Appellate Court that the plaintiff has not been able to produce even a single witness out of large gathering of persons at the time of execution of the Will, is wholly wrong approach. It was for the defendants to prove due execution of the Will and to dispel suspicious circumstances surrounding such execution. The

execution of the Will is not a matter of a public meeting. It is scared document executed only in the presence of persons who are close to the testator. The Will is purported to be attested by a number of people, but the thumb impression of the deceased are only appearing on one place in the proceeding book and that too have been found to be not that of the deceased. Still further, Mastan Singh, Secretary, the scribe of the Will, is the real brother of Chand Singh DW-3, another attesting witness. Therefore, joining hands by few persons to deprive the plaintiff of inheritance cannot be ruled out. On the other hand, the equation of the plaintiff with the deceased is apparent from the voter list Exhibit P-1 and the Ration Card Exhibit P-2. Thus, the reasoning given by the Courts below dismissing the suit of the plaintiff suffers from patent illegality and irregularity. The findings are based upon the conjectures and surmises alone and by ignoring well established principles of law that onus of the Will is always on the propounder and the propounder alone has to dispel all suspicious circumstances.

Consequently, the findings recorded by the Courts below on Issue No.2 are reversed and it is held that the Will dated 23.12.1980 is not proved to be executed and that the execution of the said Will is surrounded by suspicious circumstances.

Before parting with the judgment, another argument raised by learned counsel for the respondent is required to be noticed. He has argued that Ram Ji Dass plaintiff has died on 8.6.2006. One Neena Rani has sought to represent his estate on the basis of unregistered Will dated

26.6.1997. Therefore, in the absence of any proof of Will, Neena Rani cannot continue with the present appeal. However, I do not find any merit in the said argument. The impleadment of the LRs is only to continue with the lis initiated by Ram Ji Dass. The decree herein passed is to enure for the benefit of estate of the Ram Ji Dass. Inter se dispute regarding estate of Ram Ji Dass is not subject matter of the present appeal nor can be made subject matter of the present proceedings. Therefore, I do not find any merit in the argument raised by learned counsel for the respondents.

In view of the discussion above, the judgment and decree passed by the Courts below is set-aside and the suit is decreed to the effect that the plaintiff is entitled to the estate of Deceased Smt.Sardhi Devi on the basis of Will dated 12.4.1971.

Thus, the present appeal is allowed with costs.

February 21, 2007
**mohinder*

(HEMANT GUPTA)
JUDGE